

आयकरअपीलीयअधिकरण ,इन्दौरन्यायपीठ ,इन्दौर
 IN THE INCOME TAX APPELLATE TRIBUNAL,
 INDORE BENCH, INDORE
 श्रीडी.टी.गरासिया ,न्यायिकसदस्य
 तथा
 श्रीओ.पी.मीना ,लेखासदस्यकेसमक्ष

BEFORE SHRI D.T. GARASIA, JUDICIAL MEMBER
 AND
 SHRI O.P. MEENA, ACCOUNTANT MEMBER

आ.अ.सं /I.T.A. No.478/Ind/2015		
निर्धारणवर्ष/ Assessment Year:2005-06		
Shri Mangilal Jhawar 69 Janki Nagar Extension, Indore अपीलार्थी /Appellant	vs.	DCIT 1(1), Indore प्रत्यर्थी /Respondent
स्था.ले.सं./PAN: ABJPJ 8399P		
अपीलार्थी की ओर से/Appellant by		Shri Girish Agarwal, CA
प्रत्यर्थी की ओर से/Respondent by		Shri Mohd. Javed, Sr. DR
सुनवाई की तारीख/Date of hearing		16.01.2017
उद्घोषणा की तारीख/Date of pronouncement		16 .01.2017

आदेश /O R D E R

PER O.P. MEENA, ACCOUTANT MEMEBR.

This appeal is filed by the assessee against the order of ld. Commissioner of Income tax (Appeals)-I, Indore [hereinafter referred to as the CIT (A)] dated 26.02.2015. This appeal pertains to Assessment Year 2005-06 as against appeal decided in respect of assessment order dated 16.10.2007 passed u/s. 143(3) of Income Tax Act, 1961(herein after referred to as "the Act) by the DCIT 1(1), Indore [hereinafter referred to as the AO]. The assessee has taken following grounds of appeal:-

1. *“The learned CIT(A) has erred in confirming the addition of Rs. 6,28,000/- made by the AO on account of disallowance of interest under section 36(1)(iii).*

- 2. The Ld. CIT (A) has erred in not appreciating and adjudicating judgements Jurisdictional High Court and Apex Court submitted before him.*
 - 3. The addition made to returned income and sustained by the CIT(A) may please be deleted.*
 - 4. The appellant prays to grant such relief as is found admissible under the law & equity.*
2. Succinctly, facts as culled out from the orders of lower authorities are that the assessee is an individual and has filed his return of income on 07.03.2006 declaring total income of Rs.1, 15,710/-. It was noted that the assessee has not charged an interest from M/s. Maa Annapurna Agritech Pvt. Ltd. which was shown its opening debit balance at Rs.85,33,412/- and closing debit balance at Rs. 17,00,000/- and average closing debit balance was Rs.16,50,000/-. It was further noticed that the assessee had received interest of Rs.8,90,706/- and paid interest of Rs.8,67,414/-, and has thus, shown net interest income of Rs. 23,292/-. The assessee was asked to explain as to why proportionate interest@ 12% should not be disallowable on the debit balance of M/s. Maa Annapurna Agritech Pvt. Ltd. Accordingly, Assessing Officer has worked out proportionate disallowable interest of Rs.6,28,000/- by computing disallowable interest at Rs.85,00,000/-being opening debit balance to Rs. 17,00,000/- being closing debit balance at the end of the year.
3. Being, aggrieved with the order, the assessee has filed an appeal before the Ld. CIT (A). The Ld. CIT(A) was of the view that the onus was on the appellant to prove that such loan and advances for this year and last year was not extended out of interest bearing funds. Since the assessee has failed to furnish copy of bank account to show the nexus, therefore the Ld. CIT(A) has drawn an inference that borrowed funds were used for none business purpose hence interest disallowance by the Assessing Officer was confirmed.

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4. Being, aggrieved the assessee filed an appeal before us. The Ld. Counsel submitted that the assessee had shown net interest income of Rs.23,292/- (890706-867414) and received interest of loan advances of Rs.1,34,59,744/- @ 12% per annum. The assessee has paid interest @ 6% to 24% during the year as follows:

@6%	Four parties	Rs.4,79,251/-
@9%	One party	Rs. 78,149/-
@11.15%	Two parties	Rs. 65,100/-
@12%	Two parties	Rs.1,46,780/-
@24%	One party	Rs. 98,134/-

5. The learned Counsel submitted that from the above calculation the interest of Rs.6,22,500/- has been paid at the rate of 6 % to 12% which is less than 12% i.e. the rate at which interest is received except in one case which is @ 24%. Therefore, the assessee has paid an amount of interest of Rs.98,134/ which is exceeding 12% i.e. @ of 24% which the Ld. Assessing Officer has taken note in the assessment order. The assessee has total income free deposit of Rs.20,90,000/- and own capital of Rs.44,39,966/-. Thus, the assessee has total interest free funds available his disposal at Rs.65,32,966/- as against interest free/exempt income yielding investments of Rs.47,81,682/- which has been arrived after reducing Rs.1,34,59,744/- being interest bearing loans and advances given from the total asset of Rs.1,82,41,426/- in the balance sheet. It was also submitted that other investment and assets of Rs.47,81,682/- also were included debit balance of Rs.16,50,000/- of M/s. Maa Annapurna Agritech Pvt. Ltd. therefore, it was argued that the interest free funds available with the assessee were at Rs.65,32,966/- which are more than the interest free/exempt income yielding investment of Rs.47,81,682/- therefore, disallowance of

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interest calculated on a notional basis by applying interest rate of 12% which is unwarranted, hence, same may be deleted.

6. We have considered the facts and perused the material on record and also considered rival submissions of the parties. From the submissions of Ld. Counsel, we find that the assessee had total interest free funds available at his disposal at Rs.65,32,966/- as against the interest free/exempt income yielding investment of Rs.47,81,682/-. We are also aware of the fact that the assessee has shown net interest income of Rs.23,292/- which is the outcome of interest received @ 12% on loan and advances and interest paid @ 12% loan and advances as could be seen from the chart as given above. We find that the assessee has given interest of Rs.98,134/- only which is exceeding 12% interest rate. In view of these facts and circumstances, the disallowance of interest to the extent of Rs.98,134/- is required to be sustained and balance disallowance of interest of Rs.5,29,866/- is deleted as the assessee had interest free funds available at his disposal amounting to Rs.65,32,966/- as against interest free/exempt income yielding investments of Rs.47,81,683/-. In the light of these facts, the above grounds of appeals of the assessee are partly allowed.
7. In the result, the appeal filed by the assessee is partly allowed.
8. This order was pronounced on open court as on 16.01.2017.

Sd/-
(डी.टी.गरासिया)
न्यायिक सदस्य
(D.T.GARASIA)
JUDICIAL MEMBER

Sd/-
(ओ.पी.मीना)
लेखा सदस्य
(O.P.MEENA)
ACCOUNTANT MEMBER

दिनांक /Dated : 16 January, 2017/opm

